CRIMINAL APPEAL (D.B.) No.497 OF 1988

*****

Against the judgment and order dated 20.8.1988, passed by Shri Chandra Shekhar Lal, learned Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.13 of 1988.

*****

Ram Sakhi Devi: ... … Appellant

Versus

The State of Bihar: … … Respondents

*****

For the Appellant: Mr. Anil Kumar Singh,
Amicus Curiae

For the S t a t e: Mr. Lala Kailash Bihari Prasad,
Public Prosecutor.

*****

P R E S E N T

THE HON'BLE MR.JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR.JUSTICE SAMARENDRA PRATAP SINGH

****

WEB COPY NOT OFFICIAL

S K Katriar
&
S.P. Singh, JJ. The sole appellant is aggrieved by the judgment dated 20.8.1988, passed by the learned Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.13 of 1988 (State of Bihar Vs. Ram Sakhi Devi), whereby she has been convicted under Section 302 of the Indian Penal Code and has been sentenced to imprisonment for life. The appellant has been convicted for causing death of Pramod Kumar, a boy aged six years, by drowning him in the river flowing by the village.

2. Learned counsel for the appellant did not appear in spite of repeated calls. We have, therefore, appointed Mr. Anil Kumar Singh, Advocate, to assist us as Amicus Curiae.

3. According to the prosecution case, one Dev Narain Singh recorded his Fardbeyan on 10.7.1987, at about 8.00 P.M. that he along with his grand-son, said Pramod Kumar, and the grand-daughter, namely, Somi aged eight years, had gone to their Bathan (the place for cattle in the village). He got busy with his banana plantation and the two children started playing in the orchard opposite the Bathan.

WEB COPY NOT OFFICIAL

While approaching the *Bathan,* the informant had noticed that the appellant herein (wife of Deo Nandan Singh), was sitting at a particular point close to the orchard. After the work in his banana orchard, at about 11.00 A.M. he found that Somi alone was there. On enquiry, Somi informed him that the appellant had given them guavas to eat, and had then taken away Pramod Kumar to the river side after telling her (Somi) that he wanted to ease himself. The informant then proceeded towards the river side in search of his grand-son. He had noticed all along the way, foot-marks of an elderly person and that of a child. Suspicion arose in his mind that the appellant had murdered his grand-son and had

thrown him in the river. He requisitioned the services of Bishandeo Sahni (P.W.2), and Jalim Sahni (P.W.3), fishermen, who had thrown nets in the river leading to recovery of the dead body of the boy from the river-bed. Hence this Fardbeyan was registered as Vaishali P.S. Case No.0070 of 1987, dated 10.7.1987, under Sections 302 and 201 of the IPC. Formal F.I.R. was drawn on 11.7.1987, at about 4.00 A.M.

4. Investigation commenced leading to the charge-sheet under Section 302 as well as Section 201 of the IPC against the appellant. The case was committed to the court of Sessions which was registered as Sessions Trial No.13 of 1988. Charges were framed under the two sections by the learned Sessions Judge, on 26.2.1988.

WEB COPY NOT OFFICIAL

5. The prosecution examined nine witnesses. P.W.1 is Hari Ram Singh, who is the son of the informant, and the father of the two children. He has stated that Pramod Kumar was a boy aged six years and Soma is his daughter aged eight years. It was a Friday about eight months ago, his father along with the two children at about 10.00 A.M. had gone over to their *Bathan*. The children started playing and his father got busy with the banana plantation as well as the cattle. He (P.W.1) was himself in his *Chaur* lands. After his return from the *Chaur* land, he has enquired

from Somi as to where Pramod was. She told him that the appellant herein had given both of them guavas to eat and then taken away Pramod Kumar towards the river to enable him to ease himself. He himself, his father (P.W.5, the informant), P.W.4 (Vishwanath Singh), and Somi (P.W.7), started moving in search of Pramod Kumar. While going towards the river side they found foot-marks of an elderly person as well as a child which was found upto the place of the river. There was man's height water in the river. Suspicion had arisen in their minds that the dead body of Pramod Kumar may be found in the river. His father (P.W.5), and Vishwanath Singh (P.W.4), had called Bishandeo Sahni (P.W.2), and Jalim Sahni (P.W.3), along with the net. Net was thrown in the river and they were able to recover the dead body. Pramod Kumar was wearing a black underwear. All of them could identify the dead body of Pramod Kumar. He has further deposed to the effect that his father (P.W.5) that morning told him that the appellant was complaining to him (P.W.5) that this witness (P.W.1) was exercising witch-craft on her and she would ensure that P.W.1 is rendered heir-less. The stomach of the dead-body was swollen. They felt convinced by the statement of Somi and the foot-marks that the

WEB COPY NOT OFFICIAL

appellant had drowned Pramod Kumar to death in the river.

He has stated in his cross-examination that *Bathan* was about half kilometer away from his house. The house of his uncle and that of the appellant are closed to the *Bathan.* River Baya is at a distance of about 300 yards from his *Bathan.* He has also deposed in his cross-examination that the appellant herein is his agnate. The two families have no quarrel with each other. He has denied the suggestion that he has a land dispute with the appellant, and has also denied that his child had himself got drowned in the river, and they have falsely implicated the appellant.

WEB COPY NOT OFFICIAL

6. P.W.2 is Bishandeo Sahni and is a fisherman. He has deposed to the effect that on a Friday, about eight months ago at about 2.00 P.M., he and P.W.3 (Jalim Sahni) had gone over to Baya river at the instance of Dev Narain Singh. They had followed the foot-prints of a child which had led them to the place near the river. They had thrown their net in the river. They were able to recover the dead body of Pramod Kumar with the help of the net at a distance of about two *Laggis* from the bank of the river. The river was then about 8′ deep (*पांच हाथ गहरा था*). They could after recovery of the dead body identify it to be of Pramod Kumar. His stomach was

swollen. He was also identified by his family members. He had thrown the net in the river at the instance of Dev Narain Singh.

7. P.W.3 is Jalim Sahni and another fisherman, who had joined P.W.3 in throwing net in the river and recovering the dead body of Pramod Kumar. His deposition is to the same effect as P.W.2.

8. P.W.4 is Vishwanath Singh. He is a cultivator and a co-villager. He has deposed to the effect that about nine months earlier on a Friday at about 1.00 P.M., he had gone to river Baya. He had called the fishermen at the instance of P.W.5. He had noticed the foot-prints of an elderly person along with that of a child. The fishermen so called have been examined as P.Ws.2 and 3. The dead body of Pramod Kumar was recovered from the river after the net was thrown in the river.

WEB COPY NOT OFFICIAL

9. P.W.5 (Dev Narain Singh) is the informant. He has deposed to the effect that about 10 months ago on a Friday, he along with his grand-daughter, Somi aged seven years, and grand-son Pramod Kumar aged eight years, had gone over to the *Bathan.* The two children had started playing in the orchard and he became busy with the banana plantation. While approaching the *Bathan*, he had noticed the appellant herein sitting near the tube-well boring. After doing

his work in the banana plantation, he returned to the *Bathan* at about 11.00 A.M.. He found his grand-daughter but the grand-son was not there. His grand-daughter informed him that the appellant had given them guavas to eat whereafter she had taken away Pramaod Kumar so that he could ease himself. He went towards the river side in search of his grand-son. He was accompanied by Vishwanath Singh (P.W.4), Hari Ram Singh (P.W.1), and others. He had noticed the foot-marks of an elderly person and that of a child upto the river. They had thereafter called Bishandeo Sahni (P.W.2), and Jalim Sahni (P.W.3), with the net. The net was thrown in the river and they were able to recover the dead body of Pramod Kumar. He has further deposed to the effect that in the morning of the day of the occurrence, the appellant had told him that his son, Hari Ram Singh (P.W.1), was practising witch-craft on the appellant and she will ensure that he is rendered heir-less. After learning of the incidence the Sub-Inspector of Police had come over and recorded his Fardbeyan. He has proved Exhibit-1. He recognised the appellant in the dock. He has, inter-alia, stated in his cross-examination that, after having learnt about the occurrence, the Sub-Inspector of Police had arrived at 8.00 P.M. He had taken his statement, that of his son, and Vishwanath

WEB COPY NOT OFFICIAL

Singh (P.W.4). He has also stated that he may not have developed any suspicion, if he had not noticed the appellant at the boring side. She is his agnate. He has further stated that there is no conflict between them. He has denied the suggestion that the grand-son had died of drowning of his own.

10. P.W.6 (Jitendra Prasad Singh) is a cultivator and Mukhiya of the local Gram Panchayat. He has proved Exhibits 1/1, 1/2 and 2. He has supported the prosecution case and has stated that he all along noticed the foot-marks of an elderly person and that of a boy upto the river.

WEB COPY NOT OFFICIAL

11. P.W.7 (Somi) is the grand-daughter of the informant and had, at 10.00 A.M., gone to the *Bathan* along with his grand-father and his brother. The brother was aged six years and younger to her. The two children had gone over to the *Bathan* to play. The appellant had given them guavas after plucking the same. She had then asked her to stay at that place, telling her that she shall return after Pramod Kumar had eased himself. She had taken Pramod Kumar in the direction of the river. She had informed his grand-father and father that Pramod Kumar had not returned. Net was thereafter thrown in the river and the dead body of Pramod Kumar was recovered (at this point of time of her deposition, she started weeping).

She has stated that she will be able to identify the appellant. She has said in her cross-examination that she does not know how to read a watch. She was unable to say that as to what was the time then. She has further stated that Pramod did not tell her that he wanted to ease himself. After doing his job in the banana plantation and after her grand-father had come to the orchard, she had informed him that the appellant had taken away Pramod in the direction of the river. Her father had reached there after her grand-father. She had not followed her brother and continued to be playing. She has denied in her cross-examination that the appellant had given her anything to eat. She has denied the suggestion that she has been tutored. Her statement had been recorded by the Investigating Officer at her residence.

WEB COPY NOT OFFICIAL

12. P.W.8 (Ram Govind Prasad) is a Civil Assistant Surgeon, who had conducted the post-mortem on the dead body. He has deposed to the effect that the child was aged six years and was identified by the two police personnel. Rigor mortis was present all over the dead body, and was soiled with mud. The following ante-mortem injuries were present on the dead body:-

(i) Scratch 1/2" in diameter on the right side of abdomen 3" above the waist. The injury was caused by hard blunt substance.

On opening the chest and abdomen trachea contains white fine forth with particles of sand and mud. Lungs distended. Aedematus doughy in filling and pits on pressure. On suction exudes frothly blood stained fluid. The left chamber of heart empty. Right side of heart was full of blood. Lever, spleen and kidney were congested. Stomach contained semi digested food materials and water. On section lever engorged with dark fluid blood. Substance used drowning in water. Time elapsed since death and Post-mortem examination was about 24 hours. Death was in my opinion due to asphyxia due to drowning in water.

This is postmortem report in my pen and bears my signature which is marked as Ext.3.

Cross examination:-

I do not find any external injury on the dead body except the scratch above mentioned. The scratch could have been possible even by fall.

He proved the post-mortem report and has been marked Exhibit 3.

WEB COPY NOT OFFICIAL

13. P.W.9 (Man Mohan Prasad) is Sub-Inspector of Police. He was Officer-In-charge, Vaishali Police Station, on 10.7.1987. He had recorded the Fardbeyan of P.W.5 (Dev Narain Singh) at 8.00 P.M., which has been marked Exhibit-4. Formal F.I.R. has been marked Exhibit.5. He prepared the inquest report at 9.00 P.M. and has been marked Exhibit-6. He had forwarded the dead body for post-mortem. He proved the communication forwarding the same. The same has been marked Exhibits 7 and 7/1. He had gone to the place of occurrence at 8.30 P.M. on 10.7.1987. Baya river is about 250 yards from the

village. It is about 40’ wide and 20’ deep. The river was full of water. He had noticed the foot-marks of a child near the river as well as that of an elderly person. Mango and guava orchard of Vishwanath Singh was at a distance of about 100 yards from the river. He had arrested the appellant the same day.

14. The learned Sessions Judge had put various questions to the appellant herein in terms of Section 313 Cr.P.C.. She has, inter-alia, stated that she has/had land dispute with the two witnesses. She has denied to be any where near (close to) the child and has not even touched him. It is significant to note that she has stated that the boy had died because of drowning in the river. She complained of false implication and claimed to be tried.

WEB COPY NOT OFFICIAL

15. In view of the materials on record, the learned Sessions Judge found that the belief on the part of the appellant that she was under the evil influence of witch-craft at the instance of the father of the deceased was the motive for the occurrence. He has found that, in view of the information given by P.W.7, the grand-daughter of the informant, they had followed the foot-marks of two persons leading to the river. The dead body was recovered from the river. The post-mortem report also supports the prosecution case. The accused has not

explained how the boy escaped from her supervision when she had taken the boy for easing himself. In view of these findings, the learned Sessions Judge convicted the appellant under Section 302 of the IPC. She has, however, been acquitted of the charge under section 201 of the IPC.

16. The obvious question for determination is whether or not the appellant had caused murder of Pramod Kumar by drowning him in the river. It is a case of circumstantial evidence and it has to be considered whether or not the last-seen theory is attracted in this case. Law is well settled that the Courts have to be very careful in such a case and the accused should not be convicted unless and until every link in the chain is convincingly connected. The last-seen theory does not by itself prove the commission of offence but is only a link in the chain of circumstances. We are reminded of the observations of the Supreme Court in **Sukhram Vs. State of Maharashta, reported in (2007)3 SCC (Cri) 426,** paragraph 20 of which is reproduced hereinbelow for the facility of quick reference:

> "20. In the present case, indubitably there is no eyewitness and the prosecution had sought to establish the case against the appellants from circumstantial evidence. It is trite to say that in a case based on circumstantial evidence, the

WEB COPY NOT OFFICIAL

> circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but all the circumstances so established should be of conclusive nature and consistent with the hypothesis of the guilt of the accused. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. Therefore, the evidence has to be carefully scrutinised and each circumstance should be dealt with carefully to find out whether the chain of the established circumstances is complete or not. (See Dhananjoy Chatterjee v. State of W.B.[6]"). It also needs to be emphasised at this stage itself that in a case based on circumstantial evidence motive assumes great significance inasmuch as its existence in an enlightening factor in a process of presumptive reasoning."

WEB COPY NOT OFFICIAL

17. P.W.1 has deposed to the effect that the appellant had told his father (P.W.5), the same day in the morning that he (P.W.1) was exercising witch-craft on her and she will ensure that he (P.W.1) is rendered heir-less. P.W.5 has deposed to the effect that the appellant had told him to that effect that day in the morning. It further appears to us that P.W.5 along with his grand-son and grand-daughter (P.W.7) had gone over to their *Bathan.* He had noticed the appellant sitting a little distance away near the tube-well. P.W.5 got busy with his banana plantation a little distance away. After doing the work, he returned to the children and found Pramod Kumar absent. P.W.7 informed him that the

appellant had given to them guavas to eat whereafter she had taken Pramod Kumar to the river side so that he could ease himself. Before leaving, she had informed P.W.7 that he (Pramod) will return after easing himself. P.W.7 has deposed to the same effect.

P.W.7 had informed P.W.5 that the appellant had taken away Pramod Kumar in the direction of the river. P.W.5 proceeded towards the river and all along noticed foot-prints of an elderly person as well as that of a child. P.W.5 had, after reaching the river, developed suspicion that Pramod Kumar had been done to death by the appellant by drowning him in the river.

WEB COPY NOT OFFICIAL

They had then taken steps to fetch P.Ws.2 and 3, who are fishermen, with the net. P.Ws.2 and 3 had thrown net in the river and the dead body of Pramod Kumar was recovered. The prosecution witnesses have deposed that his stomach was swollen.

The fardbeyan was recorded at the residence of P.W.5, followed by inquest report, and the post-mortem. The appellant was arrested at 9.00 P.M. the same day on the basis of last-seen theory.

18. It thus appears to us that all the prosecution witnesses have consistently supported the core of the prosecution case, namely, the motive for the occurrence. P.Ws.5, 7, and Pramod Kumar (deceased)

going over to the *Bathan* together at 10.00 A.M. on 10.7.1987. P.W.5 had then noticed the appellant sitting a little distance away near the boring. He got busy in the banana plantation leaving the children in the orchard. The appellant gave guavas to the two children to eat and took away Pramod Kumar towards the river side for easing himself. He (P.W.5) had returned to the spot where the children were playing after doing his work with the banana plantation, he was informed by P.W.7 of the absence of Pramod Kumar. Both of them along with P.Ws.1 and 4 walked over in the direction of the river following the foot-marks of an elderly person and that of a child. These are the chain of circumstances in the proper sequence and have been consistently proved by the prosecution witnesses. The last link in the chain is recovery of the dead body with the help of the net from the river.

WEB COPY NOT OFFICIAL

19. It thus appears to us that the chain of evidence in a chronological manner is complete and has been convincingly proved by the prosecution witnesses. P.Ws.5 and 7 in particular, duly supported by P.Ws.1 and 4, have clearly proved that the child was last seen in the company of the appellant. The time-lag between the point of time the appellant and Pramod Kumar were last seen, the time of commission

of the offence, and its discovery by P.W.5, are in close proximity with each other and there is no suspicion that the boy could have gone into the company of anybody else. We must also observe at this stage that, in view of the last-seen theory attracted in the present case, the onus shifted to the appellant to explain whether or not the boy had escaped her possession/supervision. We are convinced that the deceased was not only last-seen in the company of the appellant, she had in fact taken him away to the river side. The defence has not examined any witnesses to discharge this part of their onus. The prosecution witnesses have been remarkably consistent in their deposition and have remained unshaken in their cross-examination. We, therefore, conclude that the last-seen theory is a very important link in the chain and enables the prosecution to prove its case. We are left with no doubt about the veracity of the intimate connection of this link in the chain of circumstances.

WEB COPY NOT OFFICIAL

20. We must also consider the medical evidence. First of all the inquest report, Column no.5 of which reads as follows:

> "पेट पर दाहिने तरफ छिलाया हुआ जख्म दाहिने कान से खून बहता हुआ पेट फुला हुआ! दाहिने आंख में सूजन!"

The inquest report supports the prosecution case that he had died on account of drowning in the water and is fully consistent with the post-mortem report. Both state that there were scratches on the right side of the stomach and the stomach was swollen. The post-mortem report set out hereinabove also proves drowning of the deceased in the water.

21. We, therefore, conclude that the appellant had carried away the child from the possession of his sister on the pretext to enable him to ease himself, had taken him to the river side which was then full of water to drown the boy aged eight years, and had forcibly thrust him in the water to ensure that he died on account of drowning. We are fully convinced that the prosecution has been able to prove the guilt of the accused.

WEB COPY NOT OFFICIAL

22. In the result, we dismiss this appeal and uphold the impugned judgment. The appellant stands convicted under section 302 of the IPC and shall suffer rigorous imprisonment for life. Her bail bonds are cancelled. She shall surrender before the learned trial court forthwith.

23. Let the secretary, High Court Legal Services Committee, Patna, pay a sum of Rs.2,500/- (Rupees two thousand and five hundred) to Mr. Anil

Kumar Singh, Advocate, for assisting the Court as Amicus Curiae.

24. Let a copy of this judgment be handed over to Mr. Anil Kumar Singh, Advocate.

(Sudhir Kumar Katriar, J.)

(Samarendra Pratap Singh, J.)

Patna High Court, Patna
Dated the 15th day of July, 2008
S.K.Pathak/ (A.F.R.)

WEB COPY NOT OFFICIAL

WEB COPY
NOT OFFICIAL